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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,592

03/19/2004

William Galbraith

80154

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26253

7590

01/24/2008

DAVID W. HIGHET, VP AND CHIEF IP COUNSEL
BECTON, DICKINSON AND COMPANY
1 BECTON DRIVE, MC 110
FRANKLIN LAKES, NJ 07417-1880

EXAMINER

YU, MELANIE J

ART UNIT

PAPER NUMBER

1641

MAIL DATE

DELIVERY MODE

01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/804,592	GALBRAITH, WILLIAM	
	Examiner	Art Unit	
	Melanie Yu	1641	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6, 24-31, 52 and 53.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


LONG V. LE 01/17/08
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 10 December 2007 have been fully considered but they are not persuasive.

Applicant argues that example 9 as taught by Sjöholm refers back to the immobilization method in example 1. Applicant argues that since Sjöholm does not specifically state that bromosulphophthalein is substituted for albumin (as explicitly stated in examples 4 and 10) that the substrate is prepared with both bromosulphophthalein and albumin and the bromosulphophthalein is therefore exposed to albumin. Applicant further argues that both ligands must be immobilized on the support because Sjöholm teaches that a mixture of proteins, both bromosulphophthalein and albumin must be present. Applicant's arguments are not persuasive because example 9 states that the microparticles are prepared "in a manner similar to example 1". Examples 4 and 11 also state that the microparticles were prepared similar to example 1, and teach that other proteins are substituted for albumin. It is apparent that substitution of bromosulphophthalein for albumin occurs because nowhere does example 9 state that both bromosulphophthalein are present in the microparticle. Furthermore, example 9 teaches that the particles absorb albumin from pig liver. If the bromosulphophthalein has already been exposed to, and therefore bound to albumin, the microparticles would not be capable of absorbing albumin from pig liver.

With respect to the combination of Grahén, Spring and Degen, applicant argues that the bromosulphophthalein is prepared with sodium borohydride, which is a reducing agent, and complexes with oxygen found on the cross-linked sepharose and it is therefore unclear how an epoxy linkage can be substituted with oxygen complexed in the process. Applicant's argument is not persuasive because the oxygen is part of the attachment on the sepharose and the complex with oxygen would not occur if an epoxy linkage were used. One having ordinary skill in the art would recognize that the epoxy linkage would be substituted for the linker used in Grahén.

Regarding the rejection under Pieper et al., Spring et al. and Degen et al., applicant argues that Pieper does not disclose an epoxy linkage with bromosulphophthalein and states that other methods of antibody immobilization may be used, but may be less preferable. However, applicant's argument is not persuasive because Pieper et al. is not relied upon for these limitations and does not teach away from an epoxy linkage.